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Application No.: 10/701/039

Inventor(s): Peter Worthington Hamilton, et al.

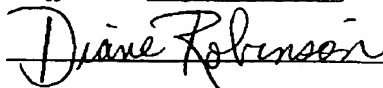
Filed: November 4, 2003

Docket No.: 5922R2CCC

Confirmation No.: 6157

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/701,039
Inventor(s) : Peter Worthington Hamilton, et al.
Filed : November 4, 2003
Art Unit : 1771
Examiner : Victor S. Chang
Docket No. : 5922R2CCC
Confirmation No. : 6157
Customer No. : 27752
Title : Improved Storage Wrap Material

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Amended Brief is filed in response to the notice of non-compliance mailed July 14, 2006. The Summary of Claimed Subject Matter has been amended to conform to the requirements of 37 CFR 41.37(c)(1)(v). This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on December 21, 2005.

A timely Notice of Appeal was filed on March 20, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

An Appeal Brief has been submitted in the prosecution of Application Serial Number 09/715,586.

STATUS OF CLAIMS

Claims 1 to 19 are rejected.

Claims 1 to 19 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

Appellant claims a storage wrap material. The storage wrap material comprises a sheet of material comprising one or more layers. The sheet of material has a first, active side and a second side. The sheet comprises a plurality of protrusions, items 12 and 34 in figures 3 and 4, integral with the first active side and the second side. The protrusions comprise from about 30% to about 70% by area of said first active side. The sheet material also comprises an adhesive, items 14 and 34 in figures 3 and 4, continuously disposed upon said first active side. The storage wrap material is linerless and is used by itself to wrap or seal materials. The storage wrap material is described in the specification at page 25, line 7 to page 28, line 2 and is illustrated in figures 2, 3, and 4.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 2, 4-9 and 11-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilbur (US 2338749).
2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697).
3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art.
4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697) and Kovac (US 3819467).

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5. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 7, 8, 14, 16, 17, 19 and 24 of U.S. Patent No. 6,194,062.

ARGUMENTS

1. Claims 1, 2, 4-9 and 11-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilbur (US 2338749).

Appellant submits that the cited reference fails to teach or suggest all of elements of the invention as claimed and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a). Specifically, the reference fails to teach or suggest a structure comprising between about 30% and about 70% by area of protrusions.

The Examiner predicates this rejection on the provision that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See MPEP § 2112.01. Appellant respectfully submits that the requirements of this supporting logic are not met in the instant case. The cited reference is silent as to any method of making the invention and therefore the cited invention cannot be said to be produced by an identical or substantially identical process. The cited reference also fails to describe a structure which is identical or substantially identical to the claimed invention. Appellant claims a storage wrap material comprising between about 30% and about 70% by area of the first side, of protrusions. The reference teaches a structure having end portions which may include protrusions and intervening portions which include no protrusions. The reference teaches pin punctures as protrusions. The reference is silent regarding the extent of the protrusions with respect to the area of the structure and the description and illustrated embodiments set forth examples wherein significantly less than the claimed range of the surface area of the embodiment is comprised of protrusions. The reference fails to teach an identical or substantially similar structure to the claimed invention.

The reference teaches that one or both end portions of the structure may be coated with an adhesive and the accompanying adhesive protection structure. The reference

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teaches that the remainder of the structure is devoid of both the adhesive and the protection structure. From this teaching, the Examiner has determined that it would have been obvious to one of ordinary skill in the art to form a sheet structure wherein between about 30% and about 70% of one side of the sheet is comprised of protrusions. As the Examiner notes, the reference is silent as to the relative proportions of the protruding and non-protruding areas of the structure. The Examiner notes that the reference teaches the same subject matter – wrappers. The Examiner fails to note that the reference teaches the subject matter of wrappers in the context of a tie-band laundry wrapper having deliberately limited adhesive portions. Appellant submits that the reference does not teach or suggest all of the limitations of the invention as claimed, or an identical method of making a structure, or an identical structure, and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a) and the rejection should be overturned.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697).

For the reasons set forth above, the base claim, from which claim 3 depends, is not properly rejected under 35 USC §103(a). Claim 3 should therefore be considered allowable. The addition of the Reed reference does not cure the deficiency of the Wilbur reference with regard to the protrusions as the protrusions of the Reed reference are not integral to the first and second sides of the material structure as claimed. The combination of references fails to teach or suggest each of the limitations of the invention as claimed and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a) and the rejection should be overturned.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art.

Claim 10 depends from claim 1 and it is the position of the Appellant that along with claim 1 should be allowed. Claim 10 adds the limitation that the storage wrap material is conformable. The cited reference relates to laundry wrappers comprised of flexible papers or the equivalent thereto. Paper and its equivalents are not generally considered to be

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conformable materials. The degree of flexibility required in a laundry tie band to successfully encircle a stack of laundered garments such that the ends of the tie band may be brought into contact with each other does not suggest or inherently demonstrate conformability in a material. The reference is silent as to any need or desire that the material of the tie band be conformable. The reference fails to establish a *prima facie* case of obviousness under 35 USC §103(a) and the rejection should be overturned.

4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697) and Kovac (US 3819467).

For the reasons set forth above, the base claim, from which claims 18 and 19 depend, is not properly rejected under 35 USC §103(a). Claims 18 and 19 should therefore be considered allowable. The addition of the Reed reference does not cure the deficiency of the Wilbur reference with regard to the protrusions as the protrusions of the Reed reference are not integral to the first and second sides of the material structure as claimed. The addition of the Kovac reference also fails to cure this deficiency and also fails to cure the deficiency regarding the relative proportion of the protrusions as part of the sheet material surface. The combination of references fails to teach or suggest each of the limitations of the invention as claimed and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a) and the rejection should be overturned.

5. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 7, 8, 14, 16, 17, 19 and 24 of U.S. Patent No. 6,194,062.

Appellant submits that an appropriate Terminal Disclaimer will be filed at such a time as otherwise allowable subject matter is identified in this application.

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SUMMARY

In view of all of the above, it is respectfully submitted that the cited references alone and in combination fail to establish a *prima facie* case of obviousness under 35 USC §103(a) and that the rejections should be overturned. Pursuant to the overturning of the rejections and the identification of the pending claims as allowable but for the non-statutory double patenting rejection, Appellant will submit and appropriate Terminal Disclaimer to overcome the double patenting rejection.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

David K. Mattheis

Typed or printed name

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CLAIMS APPENDIX

1. (Rejected): A storage wrap material comprising:
 - (a) a sheet of material comprising one or more layers, and having a first, active side and a second side, said sheet comprising a plurality of protrusions integral with said first active side and said second side, said protrusions comprising from about 30% to about 70% by area of said first active side; and
 - (b) an adhesive continuously disposed upon said first active side; and, wherein said storage wrap material is linerless and is used by itself to wrap or seal materials.
2. (Rejected): The storage wrap material of Claim 1, wherein said protrusions are selected from the group consisting of deformable standoffs, removable standoffs, repositionable standoffs, frangible standoffs, and combinations thereof.
3. (Rejected): The storage wrap material of Claim 1, wherein said protrusions comprise an amorphous pattern.
4. (Rejected): The storage wrap material of Claim 1, wherein said protrusions are collapsible.
5. (Rejected): The storage wrap material of Claim 1, wherein said storage wrap material is perforated.
6. (Rejected): The storage wrap material of Claim 1, wherein said storage wrap material is selectively activatable.

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7. (Rejected): The storage wrap material of Claim 6, wherein said selective activation is selected from the group consisting of compression activation, extension activation, thermal activation, and combinations thereof.
8. (Rejected): The storage wrap material of Claim 6, wherein said storage wrap material is capable of forming a sealing engagement with a surface in response to a said selective activation.
9. (Rejected): The storage wrap material of Claim 8, wherein said storage wrap material has a peak adhesion peel force value ranging from about 1 ounce per linear inch (0.012 kg per linear cm) to about 50 ounces per linear inch (0.600 kg per linear cm).
10. (Rejected): The storage wrap material of Claim 1, wherein said storage wrap material is conformable.
11. (Rejected): The storage wrap material of Claim 1, wherein each of said protrusions has a base diameter and wherein said protrusions are spaced to provide a center-to-center average distance of about 2 protrusion base diameters.
12. (Rejected): The storage wrap material of Claim 11, wherein each of said protrusions has a height, said height being less than said base diameter of said protrusion.
13. (Rejected): The storage wrap material of Claim 11, wherein each of said protrusions has a deformation resistance sufficient to withstand a pressure of at least about 0.1 pounds per square inch (0.69 kPa).
14. (Rejected): The storage wrap material of Claim 1, wherein said storage wrap material has an adhesion peel force after activation, said adhesion peel force being sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet material.

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15. (Rejected): The storage wrap material of Claim 1, wherein said first active side further comprises a substance disposed thereupon.
16. (Rejected): The storage wrap material of Claim 1, wherein said adhesive is a pressure-sensitive adhesive.
17. (Rejected): The storage wrap material of Claim 1, wherein said storage wrap material is clingless and exhibits no adhesion peel force prior to activation by a user.
18. (Rejected): The storage wrap material of Claim 1 further comprising a second adhesive, said second adhesive being disposed upon said second side.
19. (Rejected): The storage wrap material of Claim 18 further comprising a second sheet of material at least partially disposed upon said second adhesive.
20. (Cancelled).

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.